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September 23, 2003

VIA ELECTRONIC FILING

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: *Ex Parte:* WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of the Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, NuVox Communications, Inc. ("NuVox") submits this written *ex parte* in the above-captioned proceeding. The purpose of this filing is to provide additional information regarding the issues raised by NuVox in the initial comment round of this proceeding,[1] and to respond to the reply comments of SBC, and in particular the *Reply Affidavit of Scott J. Alexander Regarding Wholesale Policy Issues*.[2]

SBC's Practice of Billing Recurring Collocation Power Charges for Hypothetical, Super-Redundant Power Loads Violates TELRIC.

As NuVox noted in its *Opposition,* and as SBC confirmed in its August 29 reply comments and the *Alexander Reply Affidavit*, SBC bills CLECs for collocation power for 100%

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1 *See Opposition of NuVox Communications, Inc.*(filed Aug. 6, 2003) (hereinafter "*NuVox Opposition*" or "*Opposition*").

2 *See Reply Affidavit of Scott J. Alexander Regarding Wholesale Policy Issues*, WC Docket No. 03-167 ("*Alexander Reply Affidavit*").

of the amps associated with both the "A" and "B" power leads that serve CLEC collocations.[3] SBC's defense of this practice is premised on the assertion that it must stand ready to serve the full capacity of both leads—i.e., that for a 20 amp "A"/20 amp "B" pair of leads—that SBC must be prepared to serve a full 40 amp load. From that premise, SBC asserts that it must size its back-up power generating capacity (standby generators, batteries, etc.) accordingly, and contends that CLECs should therefore pay the costs associated with meeting that load. Based on this reasoning, SBC bills the monthly recurring "Power Consumption per fuse amp" charge from the SBC-NuVox interconnection agreement against 100% of the amps of the "A" power lead plus 100% of the "B" power lead. However, as demonstrated below, the core assumption that underpins SBC's position is patently erroneous—SBC is *not* required to stand ready to provide power in an amount that comes anywhere close to approaching 100% of the amps associated with the sum of the "A" and "B" leads. SBC's practice of billing monthly recurring power consumption charges based upon that flawed assumption constitutes a blatant violation of TELRIC pricing principles.

In justifying it unreasonable collocation power billing practices, SBC deliberately confuses two separate considerations that limit the amount of load that its central office power systems are required to meet, either contractually or in real-world operations. The first consideration involves the fact that power leads (i.e., the wires that carry power to the telecommunications equipment located within a central office – both to SBC's equipment and to the collocated equipment of the CLECs) are designed to be redundant and provide for an added level of security to the supply of power to critical, customer-serving equipment, while the second consideration relates to the maximum amount of power that equipment, deployed by CLECs their collocations, are capable of consuming.

In arguing that requiring the use of redundant power leads is standard practice in the telecommunications industry, SBC ignores the fact that the redundant nature of the power leads supplying power to CLEC collocations (and to its own central office equipment) inherently limits the size of the power load it must stand ready to serve. The sole reason for delivering power via matched pairs of "A/B" leads is to enhance service reliability by providing a redundant distribution path for the power from the ILEC's central office power system to the CLEC's collocation space. Central office power provided by ILECs is supplied in a redundant manner so that if one lead fails, the other lead has sufficient capacity to carry the total load being drawn by the equipment served by that pair of power leads. This configuration is not unique or unusual – to the contrary, it is the universally accepted way of provisioning power to central office-based, customer-serving equipment such as that deployed in CLEC collocations. For example, when CLEC collocated equipment is served by a pair of 20 amp leads (a 20 amp "A" lead and a 20 amp "B" lead), *the CLEC's equipment could never place a load of more than 20 amps across that pair of leads and still maintain the redundancy of the power supply.* Contrary

[3] *See NuVox Opposition at* pp. 4 - 6; *Alexander Reply Affidavit*, ¶ 8 and fn. 10.

to SBC's suggestion that it must stand ready to supply power to 100% of the amps associated with both the "A" and "B" leads, the redundancy imperative constrains the maximum load to no more than 50% of the amps associated with the "A" and "B" lead pair.[4]

Constraining the maximum load to no more than 50% of the total amps associated with the "A" and "B" leads is essential as a matter of responsible operational practice by the collocated CLEC, because failure to retain the redundant quality of the power supply risks significant customer service outages in the event either of the dual leads fails. But redundancy of the power supplied not just a matter of responsible CLEC operational practices – it is also a mandatory requirement under SBC's own collocation technical guidelines, which SBC's power engineers are required to enforce.[5] It is noteworthy that SBC stubbornly refuses to even acknowledge the existence of the industry standard practice and its own collocation technical requirements that mandate the redundant provision of collocation power, notwithstanding NuVox's prominent citation to those standards in the *NuVox Opposition.* SBC apparently believes that if it refuses to discuss redundancy, the clear implications for its collocation power billing practices will be overlooked or misunderstood. Because power drain above 50% utilization of the total amps associated with an "A"/"B" lead pair would destroy the redundant nature of the power supply and are contrary to SBC's collocation requirements for CLECs, the additional "load" above that 50% utilization level is a pure fiction – it does not occur.

There is no stand-ready obligation placed upon SBC for a hypothetical power "load" that would violate its own regulations for CLEC collocation operations, and which assumes that CLECs draw power in excess of the redundancy imperative. Notably, SBC has offered no proof that CLECs draw power at a level beyond the maximum 50% utilization rate that is required to maintain redundancy. Whether SBC, in fact, sizes its central office back-up power systems at a level to serve 100% of the total amps associated with both the "A" and "B" leads also remains unproven, but whether it does or not is ultimately irrelevant to the determination of the reasonableness of its collocation billing practices because allowing SBC to recover costs associated with a hypothetical, super-redundant load is highly inefficient and

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[4] Whether the CLEC's equipment draws power from both leads under normal operations -- or only from a single lead -- does not matter. So long as the equipment draws no more than 50% of the amperage of the sum of the two leads, redundancy is maintained, because in the event of one lead failing the other lead has sufficient capacity to carry the load.

[5] *See* TP 76200 MP, [SBC] Equipment Requirements, May 2001, Section 7.10, ("*Redundant power feeders are required for all equipment serving network elements*" [defined to include "all switching, transport and operator service equipment, and any adjuncts for those elements"]; *see also* Bell Service Practice, SBC Local Exchange Carriers, Section 790-100-656 MP, Issue B, November 2, 2000, at Sec. 4.1.3 ("*At no time shall the actual load* [on a power lead] *exceed 50% of the fuse or DC breaker protection rating*"; and, at Sec. 4.2.9 ("*...Any large variations, those being greater than 15%, in load between bus A and bus B should be investigated.*").

cannot be squared with TELRIC principles.[6] Indeed, SBC flatly acknowledges that its pricing policy is not based upon TELRIC principles by stating that "it appears the costs associated with much of Ohio Bell's central office DC power infrastructure may not have been included in the study – and thus simply are not reflected in the existing collocation power rates."[7] Of course, it strains credulity to suggest that Ohio Bell "forgot" to include major components of its central office infrastructure somewhere in its collocation cost studies, but based on the reasonably thorough cost study information concerning the power consumption charge, its is beyond question that the charge was designed to recover the cost of power consumed, and that calculation is nowhere divided by 2 in order to account for the redundancy principle. Any ambiguity that SBC now attempts to conjure only points to the fact that SBC's application of the power consumption charge cannot be based on TELRIC principles.

Notably, for more than two years--from mid-2000 until late-2002 --SBC in its SWBT region billed the monthly recurring collocation power charge against 50% of the total amps associated with an "A/B" pair of power leads – i.e., in a manner consistent with the redundant nature of the power. However, in late 2002, and without advanced notice, SBC changed its SWBT region practice to provide for double recovery of CLEC power charges by applying the monthly recurring power consumption charge to 100% of the sum of the amps associated with the "A" and "B" feeds, and to apply that changed practice retroactively back to the Fall 2001. That post-271 SBC "about-face" on collocation power in its SWBT region has spawned multi-state litigation across Texas, Missouri, Oklahoma and Kansas. Most recently, in the Texas litigation involving consolidated complaints brought by many CLECs, a panel of arbitrators rejected SBC's approach.[8] The Texas Decision is attached hereto as "Attachment 1."

In addition to the constraints imposed by the redundancy imperative, the inherent power utilization constraints of the CLEC equipment deployed in the collocations (and those of SBC's own central office-based equipment) act to limit the amount of power load that SBC is required to stand ready to serve. Each piece of power-using equipment that CLECs deploy in their collocations has a maximum power drawing capacity (known in the industry as the "List 2 Drain"). The sum of the these maximum power demand capabilities of the central office-based

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6 SBC's companion rationale – that billing for 100% of the total amps associated with the "A" and "B" feeds is supposedly proper because that is what the CLECs ordered – is similarly flawed. CLECs must order dual leads because that is the only way to obtain a redundant power supply and because SBC's own regulations and industry standard practices mandate redundant power. While the non-recurring Power Delivery charge is applied on a per lead basis, a CLEC order for a 20 amp "A"/20 amp "B" pair of power leads does not justify SBC billing the monthly recurring power charge against 40 amps on the grounds "that is what the CLEC ordered." That pair of leads provides 20 amps of redundant power supply and any alleged stand-ready obligation for SBC above the 20 amps level is purely fictional.

7 *Alexander Reply Affidavit* at ¶ 22 and fn. 17.

8 *See* Arbitration Award, Texas PUC Docket Nos. 27559, 27730, 27738, 27739, 27782 (Sept. 15, 2003).

equipment limit the maximum load that can potentially be placed on SBC's power systems and informs SBC of the amount of power its back-up power supply systems may need to satisfy if the incoming supply of commercial AC power were interrupted. The List 2 Drain information is part of the manufacturer's equipment specifications. Because CLECs must make available to SBC all relevant information concerning the equipment to be collocated, SBC has knowledge of the maximum potential power demand that the collocated CLEC's equipment is capable of drawing.[9]

As with the redundant nature of the power supplied, the power utilization capacities of CLEC collocated equipment place a real-world constraint on the amount of power SBC must stand ready to provide and, therefore, on the level of power supply costs that SBC legitimately can recover from CLECs consistent with TELRIC. SBC's attempt to impose the costs of a hypothetical power load that defies these realities is oppressive, unreasonable and contrary to TELRIC pricing principles.

One additional point regarding rate levels should be noted. In Attachment E to its September 9 ex parte letter SBC provided certain information regarding monthly recurring collocation power charges in other SBC region states, apparently for the purpose of implying that because the Ohio and Indiana charges are below those some other SBC states, it must be proper to bill SBC to bill the Ohio and Indiana in the manner it has. As the Commission well knows, however, TELRIC can and do differ from state to state based on differences in state commission input value determinations. However, to the extent the Commission considers such information for context, it should also be aware that the TELRIC-based rates of another major ILEC doing business in Ohio – Cincinnati Bell Telephone – *are lower than SBC's Ohio and Indiana rates and CBT applies that monthly recurring charge only to 50% of the total amps associated with an "A" and "B" lead pair – i.e., in a manner consistent with the redundant nature of the power.*[10]

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[9] The List 2 Drain of the CLEC's collocated equipment will always be higher than the actual power demand, since the List 2 Drain assumes the equipment is operating at absolutely full capacity and is drawing power at its maximum level. Moreover, there is nothing to prevent SBC from obtaining actual power demand readings on CLEC collocated equipment, either by spot-checking the power flow on the "A/B" leads via standard, readily available power measurement equipment or by installing permanent metering equipment.

[10] CBT's Ohio monthly recurring power consumption charge is $5.75. Also worth noting is the fact that CBT's charge for power delivery is substantially lower than SBC's corresponding Ohio and Indiana rates: CBT's charge for power delivery is a one-time $490.60, plus $4.09 per month, versus an SBC one-time charge of approximately $1,500 in Indiana and over $1,800 in Ohio.

SBC Imposes An Unreasonable Practice of Billing Recurring Collocation Power Charges for Non-Fused, Non-Operational Power Leads.

An additional, TELRIC-violating instituted by SBC is its practice of billing the monthly recurring power consumption charge against 100% of the fictional amps associated with "A" and "B" power leads that are not fused.[11] Again, SBC relies on the rationale that the power was "ordered," by the CLEC, and therefore the monthly recurring power consumption charge should be applicable. However, as noted previously, this line of argument ignores the fact that power is ordered by the CLEC in the context of the applicable industry standard and SBC's own regulations mandating that the power supplied be redundant in nature. Thus, even where the power leads are fused and, therefore, capable of supplying power, there is no justification for applying the monthly recurring power consumption charge to more than 50% of the sum of the amps associated with an "A/B" lead pair. Here, however, there is an even more fundamental problem: the leads are not fused and are not capable of carrying power. Thus, there is no load of any kind associated with these leads. They are not fused and there is no equipment in NuVox's collocation deployed to receive power from these leads. Thus, the entirety of the load posited by SBC with respect to these leads is fictional. In their non-fused, unconnected (to any CLEC equipment) condition, there is no back-up load for SBC to serve and no associated cost.[12]

The unstated implication by SBC appears to be that by paying for and installing these non-fused feeds, NuVox could at any later time, on short notice, activate the feeds and force SBC to supply power. There is, however, no such immediate, stand-ready obligation with respect to non-fused power leads. It is specious for SBC to suggest that NuVox could somehow immediately deploy equipment in its collocations and demand power from the non-fused feeds, since all collocation equipment additions must be processed through an augment and review process controlled by SBC. Additionally, only SBC could remove the "dummy" fuses and insert real fuses, thus activating the leads – i.e., when and whether power ever flowed over these leads has always been under SBC's control. By having paid the non-recurring Power Delivery charges on the non-fused leads, NuVox avoided risks of delay that might have thereafter occurred with installation of the cabling running from the SBC power plant to NuVox's collocation cages. By paying those non-recurring charges, NuVox also reserved terminations on the SBC BDFB. But there is no basis for SBC to suggest that it is under a stand-ready obligation to supply load on non-functional power leads that are unconnected to non-existent equipment.

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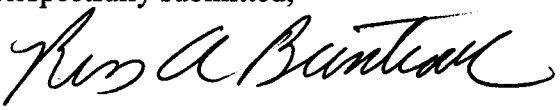
[11] *See NuVox Opposition*, 4-5. The amps ascribed to these leads are fictional because "dummy" fuses are inserted at the SBC BDFB, which prevents any power from flowing over those facilities.

[12] With respect to the costs of installing the leads and the terminations on SBC's BDFB, those costs are recovered from SBC's substantial non-recurring Power Delivery charges, which range from $1,500 to $1,800 per lead in Indiana and Ohio, and which were assessed and paid on fused and non-fused feeds alike. Those charges are not at issue here.

SBC argues that to the extent that CLECs will not need to fuse all of the power leads they "may find it advantageous to request a power reconfiguration.[13] It is disingenuous for SBC to point to reconfiguration of the power as a readily available solution, since it forces CLECs to engage in costly and unnecessary "mining-out" of deactivated power leads, required by SBC, as a condition precedent to powering down collocations to a lower amp level.[14] As a practical matter, central office power engineers are extremely reluctant to engage in "mining-out" power cables from overhead racks because of the high risk of causing unintended disruptions to adjacent power leads. Nevertheless, with respect to CLEC requests to reduce their collocation power levels, SBC has always insisted that CLECs' incur the substantial cost associated with that activity as a condition of reducing their power levels.

Respectfully submitted,



Ross A. Buntrock

cc: Pamela Arluk
Douglas Galbi
Deena Shetler
Jennifer McKee
Irshad Abdal-Haqq

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13 *Alexander Reply Affidavit*, ¶ 37.

14 NuVox has recently embarked on the process of reconfiguration to reduce the growth in the disputed collocation power charges with SBC. NuVox took that step when it became clear that carrier-to-carrier negotiations would not result in a settlement

ATTACHMENT 1

PUC DOCKET NO. 27559

COMPLAINT OF BIRCH TELECOM OF TEXAS LTD., L.L.P., AT&T COMMUNICATIONS OF TEXAS, L.P., TCG DALLAS, TELEPORT COMMUNICATIONS OF HOUSTON, INC. AGAINST SOUTHWESTERN BELL TELEPHONE L.P. FOR POST-INTERCONNECTION DISPUTE REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	PUBLIC UTILITY COMMISSION OF TEXAS

PUC DOCKET NO. 27730

COMPLAINT OF MCI METRO ACCESS TRANSMISSION SERVICES, LLC AND MCI WORLDCOM COMMUNICATIONS, INC. AGAINST SOUTHWESTERN BELL TELEPHONE L.P. FOR POST-INTERCONNECTION SIPUTE REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	PUBLIC UTILITY COMMISSION OF TEXAS

PUC DOCKET NO. 27738

COMPLAINT OF SPRINT COMMUNICATIONS L.P. AGAINST SOUTHWESTERN BELL TELEPHONE, L.P., FOR POST-INTERCONNECTION AGREEMENT DIPSUTE RESOLUTION FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	PUBLIC UTILITY COMMISSION OF TEXAS

PUC DOCKET NO. 27739

COMPLAINT OF KMC TELECOM, III, INC. TIME WARNER TELECOM OF TEXAS, L.P., AND XO TEXAS, INC. AGAINST SOUTHWESTERN BELL TELEPHONE, L.P. FORPOST-INTERCONNECTION DISPUTE RESOLUTION REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

PUC DOCKET NO. 27782

COMPLAINT OF LEVEL 3 COMMUNICATIONS, L.L.C. AGAINST SOUTHWESTERN BELL TELEPHONE COMPANY, L.P. FOR POST-INTERCONNECTION DISPUTE RESOLUTION REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD

Table of Contents

PUC DOCKET NO. 27559

COMPLAINT OF BIRCH TELECOM OF TEXAS LTD., L.L.P., AT&T COMMUNICATIONS OF TEXAS, L.P., TCG DALLAS, TELEPORT COMMUNICATIONS OF HOUSTON, INC. AGAINST SOUTHWESTERN BELL TELEPHONE L.P. FOR POST-INTERCONNECTION DISPUTE REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS' PHYSICAL COLLOCATION TARIFF	§ § § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

PUC DOCKET NO. 27730

COMPLAINT OF MCI METRO ACCESS TRANSMISSION SERVICES, LLC AND MCI WORLDCOM COMMUNICATIONS, INC. AGAINST SOUTHWESTERN BELL TELEPHONE L.P. FOR POST-INTERCONNECTION SIPUTE REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§ § § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

PUC DOCKET NO. 27738

COMPLAINT OF SPRINT COMMUNICATIONS L.P. AGAINST SOUTHWESTERN BELL TELEPHONE, L.P., FOR POST-INTERCONNECTION AGREEMENT DIPSUTE RESOLUTION FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§ § § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

PUC DOCKET NO. 27739

COMPLAINT OF KMC TELECOM, III, INC. TIME WARNER TELECOM OF TEXAS, L.P., AND XO TEXAS, INC. AGAINST SOUTHWESTERN BELL TELEPHONE, L.P. FORPOST-INTERCONNECTION DISPUTE RESOLUTION REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

PUC DOCKET NO. 27782

COMPLAINT OF LEVEL 3 COMMUNICATIONS, L.L.C. AGAINST SOUTHWESTERN BELL TELEPHONE COMPANY, L.P. FOR POST-INTERCONNECTION DISPUTE RESOLUTION REGARDING OVERCHARGES FOR POWER UNDER SBC-TEXAS'S PHYSICAL COLLOCATION TARIFF	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD

This Arbitration Award grants, in part, the motions for summary decision filed by Complainants[1] and Sprint Communications Company, L.P. (Sprint). For the reasons set forth below, the Arbitrators find that under Sections 20.5 and 21.5 of the Permanent Collocation Tariff, Southwestern Bell Telephone, L.P., d/b/a SBC Texas (SBC Texas) is authorized to charge for only the power consumed by the collocator. The Arbitrators deny the motions with respect to whether SBC Texas is in violation of § 53.004 of PURA[2] by demanding compensation for power charges in excess of a Commission-approved tariff.

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[1] For purposes of the motions for summary decision, Complainants consist of Birch Telecom of Texas, Ltd., L.L.P., AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. (collectively, AT&T), MCI Metro Access Transmission Services, LLC, MCI WorldCom Communications, Inc. (collectively, MCI), KMC Telecom III, Inc., Time Warner Telecom of Texas, L.P., XO Texas Inc., and Level 3 Communications, LLC.

[2] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2003).

I. JURISDICTION

If an incumbent local exchange carrier (ILEC) and CLEC cannot successfully negotiate rates, terms and conditions in an interconnection agreement, FTA § 252(b)(1) provides that either of the negotiating parties "may petition a State commission to arbitrate any open issues." The Commission is a state regulatory body responsible for arbitrating interconnection agreements and dispute resolution proceedings pursuant to the FTA.

II. PROCEDURAL HISTORY

On March 18, 2003, SBC Texas filed a Motion for Clarification of the revised Arbitration Award issued on April 12, 2001 in Docket No. 21333.[3] Specifically, SBC Texas requested clarification of the revised Arbitration Award regarding the appropriate calculation of rates for DC power consumption under SBC's physical collocation tariff[4] to assist in performing a true-up process. In response to SBC Texas's motion, an Order of Dismissal was issued on March 26, 2003, stating that SBC Texas's filing in Docket No. 21333 was untimely and not appropriate because the case was closed, and that SBC Texas's motion would be better addressed in a post-interconnection dispute resolution proceeding.[5] Also on March 26, 2003, Birch Telecom of Texas Ltd., L.L.P. (Birch) and AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. (collectively, AT&T) filed a joint request for post-interconnection dispute resolution regarding overcharges for power under SBC Texas's physical collocation tariff.[6] AT&T and Birch argued that SBC Texas was overcharging for power under the tariff.

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[3] The Order Approving the Revised Arbitration Award was issued on June 7, 2001. *See Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs,* Order Approving Revised Arbitration Award, Docket No. 21333 (Jun. 7, 2001).

[4] In particular, Section 20.17 and 21.17 regarding DC Power Delivery Arrangement, and Section 20.5 and 21.5 regarding DC Power Consumption. SBC Texas Local Access Service Tariff § 5 (effective Oct. 28, 2001). (Physical Collocation Tariff).

[5] *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs,* Order of Dismissal, Docket No. 21333 (Mar. 26, 2003).

[6] *Complaint of Birch Telecom of Texas Ltd., L.L.P., AT&T Communications of Texas, L.P., TCG Dallas, Teleport Communications of Houston, Inc. against Southwestern Bell Telephone, LP for Post-Interconnection Dispute Regarding Overcharges for Power Under SBC Texas' Physical Collocation Tariff,* Docket No. 27559 (Mar. 26, 2003).

On April 2, 2003, SBC Texas sought reconsideration sought reconsideration of the Order of Dismissal, alternatively seeking true-up.[7] SBC argued that its motion was appropriately filed in Docket No. 21333 because it was seeking an interpretation of the Revised Arbitration Award to assist in performing a true-up that was ordered in that docket. Alternatively, SBC requested that the Commission initiate a true-up proceeding, using SBC Texas's motion as the initial pleading in a new docket. On April 10, 2003, the Commissioners, by individual ballot, declined to consider SBC Texas's motion for reconsideration in Docket No. 21333.

Also on April 2, 2003, SBC Texas filed a motion to dismiss or to abate in Docket No. 27559, arguing that issues surrounding the collocation true-up proceeding should be addressed in Docket No. 21333, or, in the alternative, in a specific true-up proceeding rather than considering these issues in a post-interconnection dispute resolution proceeding. The Arbitrators in Docket No. 27559 subsequently issued Order No. 3 on April 11, 2003, setting a prehearing conference for April 24, 2003, and denying SBC Texas's motion to abate.

At the initial prehearing conference in Docket No. 27559, the Arbitrators determined that it was appropriate to continue under the current post-interconnection dispute resolution proceeding to address the issues in dispute, thus denying SBC Texas's motion to dismiss. Further, several companies—Sprint, KMC Telecom III, LLC, Time Warner Telecom of Texas, LP, and XO Texas, Inc.—had requested intervention in Docket No. 25779; those requests were denied.[8] The Arbitrators advised these parties to file a separate post-interconnection dispute petitions by May 2, 2003, indicating that such petitions were likely to be consolidated with the current proceeding. Pursuant to Order No. 3 issued in Docket No. 27559, four other parties filed similar petitions.[9] On May 15, 2003, SBC Texas filed a motion to sever in Docket Nos. 27759, 27730 and 27739. At the second prehearing conference, the Arbitrators denied SBC's motion to sever.[10] Also at that prehearing conference,[11] parties agreed to waive both of the requirements of

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[7] Motion for Reconsideration of the Order of Dismissal, or in the Alternative, a Motion to Initiate a True-Up Proceeding in Docket No. 21333 (Apr. 2, 2003).

[8] Prehearing Conf. Tr. at 20 (Apr. 24, 2003).

[9] Those parties are MCIMetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc. (Docket No. 27730), Sprint Communications Company, LP, (Docket No. 27738) KMC Telecom, III, Inc., Time Warner Telecom of Texas, L.P., XO Texas, Inc., (Docket No. 27739) and Level 3 Communications, LLC (Docket No. 27782).

[10] Prehearing Conf. Tr. at 11 (May 28, 2003).

P.U.C. PROC. R. 22.325(g), which provides that a hearing must commence within 50 days after the filing of the complaint,[12] and the requirements of P.U.C. PROC. R. 22.326(k)(1), which provides that a written decision be issued within 15 days after filing of post-hearing briefs.[13] Further, the parties agreed that the interpretation of the Permanent Collocation Tariff could likely be decided based solely on motions for summary decision without the need for an additional evidentiary hearing.[14] The Hearing on the Merits, consisting of oral argument on the motions for summary decision filed on June 5, 2003, was held on August 4, 2003.[15]

II. RELEVANT STATE AND FEDERAL PROCEEDINGS

Relevant Commission Decisions

In Docket No. 21333, the Commission established permanent rates for SBC Texas's Revised Physical and Virtual Collocation Tariffs.[16] The Arbitrators in that case based their

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[11] *Id.* at 13-14.

[12] The parties agreed to the procedural schedule established in Docket No. 27559.

[13] The parties agreed to waive this requirement, with the understanding from the Arbitrators that an Award would be issued no later than September 15, 2003. Several parties' filed waivers memorializing the discussion at the prehearing conference. SBC Texas filed a waiver of these procedural rules in all of the dockets. *See Birch Telecom of Texas Ltd., L.L.P., AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. against Southwestern Bell Telephone, LP for Post-Interconnection Dispute Regarding Overcharges for Power Under SBC Texas' Physical Collocation Tariff,* Birch Telecom's Waiver of Proc. R. 22.326(g), Docket No. 27559 (Jun. 5, 2003); *Birch Telecom of Texas Ltd., L.L.P., AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. against Southwestern Bell Telephone, LP for Post-Interconnection Dispute Regarding Overcharges for Power Under SBC Texas' Physical Collocation Tariff,* AT&T Communication's Waiver of Proc. R. 22.326(g), Docket No. 27559 (Jun. 5, 2003); *MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. against Southwestern Bell Telephone, LP for Post-Interconnection Dispute Regarding Overcharges for Power Under SBC Texas' Physical Collocation Tariff,* Waiver of Proc. R. 22.326(g), Docket No. 27730 (Jun. 6, 2003); *KMC Telecom, III, Inc., Time Warner Telecom of Texas, L.P., and XO Texas, Inc., against Southwestern Bell Telephone, LP for Post-Interconnection Dispute Regarding Overcharges for Power Under SBC Texas' Physical Collocation Tariff,* Waiver of Proc. R. 22.326(g), Docket No. 27739 (Jun. 5, 2003); and Level 3 Communications, LLC *against Southwestern Bell Telephone, LP for Post-Interconnection Dispute Regarding Overcharges for Power Under SBC Texas' Physical Collocation Tariff,* Letter to Arbitrators Pursuant to Request at prehearing conference on May 28, 2003, Docket No. 27782 (Jun. 5, 2003)

[14] *See* Prehearing Conf. Tr. at 14-21 (May 28, 2003).

[15] In addition to taking oral argument on the motions for summary decision at the hearing, the Arbitrators granted SBC Texas's motion to strike the affidavit of Jimmy R. Davis filed by Sprint. Tr. at 28 (Aug. 4, 2003).

[16] The purpose of Docket No. 21333 was: (1) to determine permanent rates and rate elements; (2) to determine additional rate elements, rates, terms and conditions in the permanent cost proceeding for microwave systems and transmission; and (3) to establish interconnection arrangements for interfaces operating at speeds greater than DS-3 through Digital Cross Connect Systems (DCS). *See Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs,* Revised Arbitration

decision on the SWBT Mega-Arbitration awards[17] and SBC Texas's application for entry into the in-region interLATA long-distance market.[18] As part of these proceedings, the Commission determined that once permanent rates were established in Docket No. 21333, a true-up would occur.[19]

The Arbitrators in Docket No. 21333 also relied on the Federal Communications Commission Orders that strengthened collocation rules adopted pursuant to section 251(c)(6) of the FTA, which imposed a statutory duty on ILECs to provide collocation to requesting telecommunications carriers.[20]

Relevant Tariff Provisions

Below are excerpts of the Permanent Collocation Tariff that are relevant to this proceeding:

> 20.17 DC Power Delivery
>
> The DC Power Delivery Arrangement includes the placement of two (2) DC power cable feeds to provide 40, 100 or 200 AMPS of power (expressed as 2-20 Amp feeds, 2-50 Amp feeds, or 2-100 Amp feeds), to caged and caged common collocation. . . .Rates and charges are as found in Paragraph 21.17 following.

Award (Apr. 12, 2001) and Order Approving Revised Arbitration Award, Docket No. 21333 (Jun. 7, 2001). The Arbitrators did not change the rates for power consumption for virtual collocation reflected in the Interim Virtual Collocation Tariff so true-up was limited to physical collocation.

[17] *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company,* Docket No. 16189, *et al.,* Award (Nov. 8, 1996) (First Mega-Arbitration Award). *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al.*, Award (Dec. 19, 1997) (Second Mega-Arbitration Award).

[18] In April 1999, SWBT entered into a memorandum of understanding (MOU) in Docket No. 16251, committing to revisions in its Physical and Virtual Collocation Tariffs. *See Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market,* SWBT's Memorandum of Understanding at App. B, Project No. 16251 (April 26, 1999) (MOU).

[19] In Order No. 52 in Project No. 16251, the Commission modified the proposed tariff language. The Commission determined that the interim rates would be subject to true-up, and initiated Docket No. 21333 to determine the permanent rates.

[20] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 F.C.C.R. 4761 (1999) (*Advanced Services First RO & FNPR*).

21.17 DC Power Delivery Arrangement

Caged	Charge
-Two 20 amp feeds	$389.03
-Two 50 amp feeds	$643.12
-Two 100 amp feeds	$2525.18

20.5 DC Power Consumption

The DC Power charge consists of use of the DC power plant system, with AC input and AC backup. The DC Power charge is on a per amp basis.

Rates and charges are found in Section 21.5

21.5 Rates and Charges, DC Power Consumption

Caged Collocation	USOC	Monthly Rate	NonRecurring Charge
-DC Plant (per amp)	C1FJP	$7.38(I)	None
-AC Usage	C1FJQ	$2.12	None

III. Discussion of Motions for Summary Decision

This proceeding addresses a single issue related to the calculation of DC power charges under the physical collocation tariff. Based on the motions for summary decision filed by all parties, the Arbitrators list the issue as follows:

ISSUE: Under the Physical Collocation Tariff, how should charges for DC Power use be calculated?

CLECs' Position

a. Complainants

Complainants argued that under the terms of the tariff, SBC Texas should not charge for both power consumed and redundant power provided. Instead, SBC Texas should charge for power on a per amp basis in accordance with Section 20.5 of the tariff. Specifically, the Complainants argued that for a 40-amp power arrangement, the collocator only has the ability to

utilize 20 amps of power as it is supplied as 2-20 amp feeds.[21] The remaining 20 amps, according to Complainants, is for purposes of redundancy and should not be charged for the 20 amps of redundant power.

Complainants argued that the record in Docket No. 21333 supported their position. They cited numerous portions of the post-award workshops in which this issue was discussed at length. Witness Turner, they argued, had testified that the costs that were approved for these power arrangements were based on the assumptions that the power delivery was priced for a main feed and a redundant feed.[22]

In addition, Complainants also argued that SBC Texas is in violation of PURA § 53.004 of PURA for charging rates in excess of what is authorized in the tariff. Because SBC is charging for both the "A" feed and the "B" feed, Complainants urged that the Arbitrators find that the Arbitrators find that SBC is charging unlawful rates.[23]

b. Sprint

Sprint set forth similar arguments as Complainants. Sprint further argued that the forms used by SBC Texas's Physical Collocation Order Form supports the notion that the double feeds are designed to provide redundancy.[24] Sprint asserted that SBC Texas unilaterally determined that the total power consumption was 40 amps for Texas, in contravention of the tariff.

SBC's Position

SBC Texas argued that the unambiguous terms of the tariff require that CLECs pay for every amp of DC power made available via both the "A" and "B" feeds. Specifically, SBC Texas argued that Sections 20.17 and 21.17 of the tariff provide that the total power is distributed over two feeds (the "A" feed and the "B" feed) and that Sections 20.5 and 21.5 of the tariff

[21] *See* Complainant's Motion for Summary Decision at 5 (Jun. 5, 2003).

[22] *See Id.* at 19-32.

[23] *Id.* at 35.

[24] *See* Tr. at 38-39 (Aug. 4, 2003). Additionally, Table 1A of the Physical Collocation Form was discussed among all the parties at the hearing. Tr at 98-106 (Aug. 4, 2003).

expressly provide that SBC Texas can recover its costs for the total power made available on a per-amp basis.[25]

In the alternative, SBC Texas argued that if the Arbitrators found that the terms of the tariff were ambiguous, the underlying record in Docket No. 21333 supports SBC's position that the tariff requires CLEC's to pay for every amp of power made available via both the "A" and "B" feeds.[26] Section 20.17 of the tariff contemplates that SBC Texas is providing the total amount of amperage over its DC power plant system. Therefore, SBC Texas argued that it is justified in charging for the total power amperage provided under the tariff.

SBC Texas further argued that the term "redundant" was not part of the tariff and that that term had been eliminated from a draft version of the tariff during the Docket No. 21333 post-award workshops.[27] Therefore, the CLEC's position that the power consumption charge was based on a redundant feed is without merit.

Arbitrators' Decision

The Arbitrators find that Section 20.17 of the Commission-approved Permanent Physical Collocation Tariff defines the rate element associated with the DC power arrangement or the cable arrangement required to deliver the power to the collocation space. Section 21.17 of the tariff contains the non-recurring rate for the elements described in 20.17. In other words, section 20.17 and 21.17 address the one-time costs for the power delivery arrangement. Specifically, the cable arrangement consists of two sets of feeds, namely "A" and "B" feeds, capable of carrying the allowable amperes cumulatively, or individually, as specified.

But, this specific cable arrangement, identified in terms of amperes for ordering and provisioning purposes through the tariff, does not represent a collocating CLEC's actual consumption or usage. In fact, the tariff clearly distinguishes between the non-recurring rate for the arrangement itself and the recurring rate for actual usage. The Arbitrators find that section 20.5 of the tariff describes the rate element for the actual consumption of the DC power on a per-amp basis. This rate element recovers, on a per-amp basis, costs associated with the

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[25] *See* SBC Texas's Brief in Support of Motion for Summary Decision at 11 (Jun. 5 ,2003).

[26] *Id.* at 11-12.

[27] *Id.* at 18.

consumption of DC power plant, AC input power used for charging the battery, and emergency AC back-up power systems. Thereafter, section 21.5 of the tariff establishes the monthly recurring rate for the rate element described in section 20.5.

The dispute in this proceeding centers around the application of the DC power consumption rate in the absence of a measurement device that measures the actual consumption of DC power by the collocator. While the Arbitrators acknowledge that individual metering of collocators' power consumption currently does not exist,[28] SBC Texas must nonetheless develop a process for charging CLECs that is consistent with the tariff. The Arbitrators find SBC's position that the appropriate charge for the consumption should be the total carrying capacity of the DC power arrangement is counter to the tariff provisions. If SBC Texas's arguments were correct, then there would be no need to have section 20.5 of the tariff which sets out the rate element for DC power consumption separate and apart from section 20.17, the DC power arrangement. This issue has been raised previously by SBC Texas during the post-arbitration workshop in Docket No. 21333 and the Arbitrators in that proceeding disagreed with SBC Texas, clarifying that a 40-ampere arrangement consists of 2-20 amp feeds, and it does not allow it to carry a 40-ampere load on each feed.[29] The issue of per-ampere DC power consumption is separate and distinct from the non-recurring DC power arrangement charges.[30] Accordingly, consistent with the tariff's clear language, the Arbitrators find that it is inappropriate to charge collocators for the DC consumption based on the total current carrying capacity of the "A" and "B" feeds rather than the actual usage, either retroactively or on a going forward basis.

Despite the absence of individual meters to measure the actual consumption of each collocating CLEC, SBC Texas is not without options On its Physical Collocation Application Form, for example, SBC Texas requires a collocating CLEC to provide information on the DC power consumption of each piece of equipment to be collocated.[31] It is the industry practice to have the "A" and "B" feeds in a redundant arrangement to ensure continuity of DC power supply in the event of a failure of either the "A" or "B" feed. Thus, as a practical matter, the

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[28] *See* Tr. at 89 (Aug. 4, 2003).

[29] *See* Docket No. 21333, Post-Hearing Conf. Tr. at 111-18 (May 2, 2001).

[30] *See* Docket No. 21333, Training Session Tr. at 112 (Feb. 4, 2000); *see also* Docket No. 21333, Post-Hearing Conf. Tr. at 160-110 (May 2, 2001).

[31] *See* Joint Complainants Exhibit 14, Physical Collocation Application Form at 10.

Arbitrators suggest that SBC Texas may base its monthly recurring charge for the DC power consumption on a per-amp basis as specified in section 21.5 of the tariff using one of the following options:

1) total DC power consumption in terms of ampere draw of all equipment collocated by the CLEC based on the information obtained from the CLEC through its collocation application form; or

2) the maximum current carrying capacity of either "A" or "B" feed; or

3) based on the establishment of a mutually-agreeable metering arrangement.

As to the issue of whether SBC-Texas violated PURA § 53.004, the Arbitrators find that the tariff and the dispute in this proceeding are addressed as part of an FTA dispute resolution proceeding. It is not appropriate to address violations of PURA within the context of this post-interconnection dispute resolution proceeding.

III. CONCLUSION

The Arbitrators conclude that the decisions outlined in the Award, as well as the conditions imposed on the parties by these decisions, meet the requirements of FTA § 251 and any applicable regulations prescribed by the FCC pursuant to FTA § 251.

SIGNED AT AUSTIN, TEXAS the 15th day of September 2003.

FTA § 252 PANEL

TAMMY COOPER
ARBITRATOR

NARA V. SRINIVASA
ARBITRATOR

Staff Arbitration Team Members:

Tina Donahoo

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